

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Denise D. Toledo,

Case No. 15-cv-4312-JNE-KMM

Plaintiff,

v.

**AMENDED
REPORT AND
RECOMMENDATION**

Warden Julie A. Nicklin,
FCI, Waseca Warden,

Defendant.

Denise Toledo filed a petition with this Court pursuant to 28 U.S.C. § 2241 challenging her confinement at the Federal Correctional Institution in Waseca, Minnesota. (ECF No. 1) Specifically, she alleged that the fifteen year sentence she was serving pursuant to the Armed Career Criminal Act was unlawful in light of the Supreme Court's recent decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015).

It appears that Ms. Toledo was correct that *Johnson* rendered her 180 month sentence unlawful. However, she was incorrect that filing a § 2241 petition in the district of her confinement was the proper remedy for that illegality. Instead, as Warden Nicklin argued (ECF No. 10), Ms. Toledo was required to challenge her sentence in the Western District of Missouri, before the judge who originally sentenced her, pursuant to 28 U.S.C. § 2255.

Ultimately, Ms. Toledo did just that, first filing an application with the Eighth Circuit to file a successive habeas petition, which was granted. *Toledo v. United States*, No. 16-2130, Judgment, May 26, 2016.

Then, with the support of the government, Ms. Toledo filed a petition pursuant to § 2255, seeking a reduction in sentence to ten years and immediate release. That petition was granted on June 8, 2016. *Denise Toledo v. United States*, No. 16-cv-3213 (ODS), Order, June 8, 2016. Ms. Toledo has now been released from the prison in Waseca, and is now residing in a residential reentry center as her place of residence is approved by the Probation Office.

Therefore, it is recommended that Ms. Toledo's pending § 2241 petition in this Court be dismissed.

Dated: July 1, 2016

s/ Katherine Menendez
Katherine Menendez
United States Magistrate Judge